(5)

IN THE COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 233/2002

Petitioners :

1. Rajkumar Tande S/o Shri T.R. Tande aged about 36 yrs r/o Konee (Badi) Distt. Bilaspur

2. Dhirendra Sahu s/o Shri Babulal Sahu aged about 33 years r/o Post Sakti, Distt. Bilaspur.

3. Shobsingh Masram, s/o Shri Babulal aged about 30 yrs r/o Kotbarra, Pandra, Distt. Bilaspur

4. Indresh Kumar Mishra s/o Shri Sita Prasad aged about 27yrs r/o Vishwavidyalay Parishar, Koni, Bilaspur.

5. Jeetendra Kumar Singh s/o Shri Bhagwan Singh aged about 27 yrs r/o Loco Kholee Plot No. 93/11, Bilaspur.

6. Virendra Kumar Verma s/o Shri Janakram Verma aged about 31yrs r/o Bhatapara

P.R. No. 233/02
Presented by Shri P.K. Das
dated 25/11/02

अपर आयुक्त, बिलासपुर संभाग बिलासपुर

Post Sewar Tehsil Bibha distt. Bilaspur.

7. Anup Kumar Chakraborty s/o Shri M.R. Chakraborty aged about 33yrs r/o Chakraborty Niwas Post Mohammed Swai, Distt. Bilaspur.

8. Nandkumar s/o Shri Shivadmal aged about 38 yrs r/o Post Poshar, distt. Bilaspur.

9. Vinod Kumar Devangan s/o Late Shri Bhagwati Prasad Devangan aged about 34 years r/o Behind Shyampuri Hotel, Juna Mohalla, Bilaspur.

10. Uttara Kumar s/o Shri Faguva aged about 34 yrs r/o Gram Odagun, Post Dagori, distt. Bilaspur.

11. Doctor Prasad Kaushik s/o Shri Baburao Kaushik aged about 35 yrs r/o Gram Hardi, Post Beeja via Kargi Road, dist. Bilaspur.

(7)

VERSUS

Respondents :

1. Guru Ghasidas Vishwavidhayalay through Registrar, Guru Ghasidas Vishwavidhaylay, Bilaspur

2. Registrar Guru Ghasidas Vishwavidyalay, Bilaspur.

WRIT PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF CERTIORARY, MANDAMUS OR ANY OTHER SUITABLE WRIT, ORDER OR DIRECTION.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

W.P.No. 232, 233 & 234 of 2002

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

15.3.2002

Petitioners by Shri Dhirendra Mishra, Advocate with Shri Praveen Das, Advocate.

Respondent-University by Shri Manindra Shrivastava, Advocate.

1. With the consent of the parties the matter is heard finally. This order shall dispose of W.P.No. 232/2002,233/2002 and 234/2002.

2. The petitioners have filed this petition against the order dt. 21.1.2002 whereby his services have been terminated by the Registrar of the University as per the orders passed by the Vice-Chancellor on the ground that the Vice Chancellor passed the order on 20.1.2002 and as such their services are terminated with immediate effect.

3. Learned counsel for the petitioners submits that names were called from the employment exchange as well as from the employees of the University. The petitioners were also called for written test and interview. The petitioners were duly selected and were appointed vide order dated 24.12.2001. They gave their joining report on 15.1.2002 and thereafter their services have been terminated by the impugned order dt. 21.1.2002. It is submitted that the action of the respondents is arbitrary, before passing the impugned order no notice was given and no enquiry was conducted.

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(53)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4. Respondents have filed their return in which it is stated that on certain complaints made by the members of the association the Vice Chancellor directed termination of services and cancellation of appointment order. Document Annexure R/1 has been taken on record. It is pertinent to quote the Annexure R/1, which is quoted herein below:

"दिनांक 18/1/2002 को कार्यपरिषद की अत्यंत ही महत्वपूर्ण आपात बैठक के समक्ष कर्मचारी संध के पदाधिकारियों एवं प्रतिनिधियों ने अत्यन्त ही आपत्ति जनक दृश्य उपस्थित किया एवं इन नियुक्तियों का विरोध करते हुए कहा कि ये नियुक्तियॉ निरस्त कर दी जायें अथवा विश्वविद्यालय के अन्य सभी दैनिक वेतन एवं 89 दिवस पर कार्यरत कर्मचारियों को नियमित करने की मांग की, जो समन्वय समिति के 29/5/00 के निर्णय एवं राज्य शासन के आदेश के प्रकाश में संभव नहीं है उन्होंने बारंबार मांग की कि उपरोक्त आदेश के द्वारा नियुक्त व्यक्तियों का आदेश निरस्त किया जाय ।

मैं भोज विश्वविद्यालय में कुलपति के पद का पदभार ग्रहण करने के लिए प्रस्थान कर रहा हूँ कर्मचारियों की इस मांग के संबंध में इस समय निर्णय संभव नहीं है अतः उनकी मांग के अनुसार उपरोक्त नियुक्ति के लिए मेरे द्वारा आदेशित आदेश तत्काल प्रभाव से निरस्त किया जाय एवं की गई कार्यवाही से मुझे अवगत कराया जाय।

सही/-

कुलपति

कुलसचिव

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5. A perusal of this document shows that on 18-01-2002 before the Executive Council Meeting, some employees of the Association raised objection and they also said that other persons like daily wagers and 89 days be also regularized and as such if this is not done the appointments be cancelled. It is stated that since the Vice Chancellor was going to Bhoj Open University and he is unable to take decision of the employees' demand regarding regularization, he has directed cancellation of the appointment order.

6. The case was listed many a times, the University was given full opportunity to defend and produce any other document to justify their stand but it is stated that except the document Annexure R/1 there is no other basis for passing impugned order of termination.

7. Learned counsel for the petitioners placed reliance on a decision of Apex Court in the case of Tarlochan Dev Sharma Vs. State of Punjab and others reported in (2001) 6 SCC 260 in which it is held that:

"In the system of Indian democratic governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision-making authority and he prepared to give way or be pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to

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(C1)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a government servant. No government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior."

The position of Vice Chancellor and the status, which he enjoys, is certainly a key position in any State. He is not supposed to mortgage his own discretion, volition and decision-making authority and be prepared to give way or be pushed back or pressed ahead at the behest of anyone for carrying out commands having no sanctity in law. He has to act in accordance with law. He has to perform his duties and exercise powers conferred on him as per his own best judgment and not at the dictate of some union employees.

8. Learned counsel appearing for the petitioners submit that such action is arbitrary and no justifiable ground at all has been mentioned. If certain grievances were made by the office bearers of the Association they are to be enquired into and the appointment could not be cancelled merely by asking. No document as such is there to show that any objection in writing was placed. Even if, any objection is raised, the authorities should have acted in accordance with law. The Apex Court in the case of Abdul Karim and Others – Vs – State of Karnataka and Others reported in (2000) 8 Supreme Court Cases 710 has

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

held that the authorities should not act under pressure but they have to act strictly in accordance with law. The persons acting under pressure one way or the other do render no service. His Lordship Hon'ble Justice Y.K.Sabharwal observed in the judgment (supra) as follows: "The application and order under Section 321 is a result of panic reaction by overzealous persons without proper understanding of the problem and consideration of the relevant material though they may not have any personal motive. It does not appear that anybody considered that if democratically elected governments give an impression to the citizens of this country of being lawbreakers, would it not breed contempt for law; would it not invite citizens to become a law onto themselves. It may lead to anarchy. The Governments have to consider and balance the choice between maintenance of law and order and anarchy.

9. In the instant case it is not mentioned that any irregularity in the process of appointment was committed. Infact, the termination has been ordered on the ground that other persons could not be regularized and even notice to show cause has not been issued by the authorities, which violates the principles of natural justice.

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10. Learned counsel for the petitioners also relied upon a decision of Apex Court in the case of Shrawan Kumar Jha and others – Vs – State of Bihar and Others reported in AIR 1991 Supreme Court 309 in which it is held that prior opportunity of hearing should have been given to the affected person.

11. Shri Dhirendra Mishra, learned counsel for the petitioners also relied upon a Apex Court decision in the case of A.M./S. Sushanth and others – Vs – M. Sujatha and Others reported in (2000) 10 Supreme Court Cases 197 in which it is held that the principles of natural justice demanded that any person who was likely to be adversely affected by the order should have been given opportunity of being heard.

12. Shri Dhirendra Mishra specifically referred to the note of Registrar in document Annexure R/1 which is as follows:

इस संबंध में सविनय निवेदित है कि यद्यपि कुलपति महोदय के आदेश से 24/12/2001 को प्रसारित नियुक्ति आदेश कुलपति महोदय के उपरोक्त आदेश से निरस्त कर दिये गये हैं तथापि जैसा कि मौखिक रूप से कुलपति महोदय से अनुरोध एवं निवेदन किया गया है, इसमें वैधानिक एवं विधि सममत विवाद की संभावना है . यह भी संभव है कि संबंधित व्यक्ति न्यायालय में जायें क्योंकि 24/12/01 को प्रसारित नियुक्ति आदेश का निरस्तीकरण 20/1/2002 को दिये गये आदेशों से किया जा रहा है एवं प्रसारित आदेश के निरस्तीकरण के लिए जिन

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

विषम परिस्थितियों का उल्लेख है, वे परिस्थितियाँ नियुक्ति आदेश के निरस्तीकरण के लिए पर्याप्त प्रतीत नहीं होती है.

and submits that Registrar himself noted that there are possibilities of legal dispute and affected persons may approach the Court.

13. Article 14 of the Constitution of India provides 'Right of Equality' which says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. In the sphere of contractual relations, the State, its instrumentalities, public authorities are those whose acts bear in signia of public agreement, action to public duty or obligation or enjoyed in a manner that is fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or appear arbitrary in its decision. Any action taken by the employer against an employee must be fair, just and reasonable which are the components of fair treatment.

14. In the present case names were called from the employment exchange as well as from the employees of the University, call letters were issued, written test and interview was held then they was selected and duly appointed but have been removed from service without following the established procedure, no

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	show cause notice was issued, no opportunity of hearing was afforded, merely on the basis of instructions issued on a note-sheet (Annexure R/1) the petitioners have been terminated. The action of the respondents is arbitrary, unreasonable and without following even the principles of natural justice. If any action is required to be taken, it must be only in accordance with law. The respondents have failed to bring on record any reasonable basis for terminating the services of the petitioners. 15. In view of the aforesaid discussion the impugned order dated 21.1.2002, terminating the services of the petitioners deserves to be and is hereby set aside. The petition is allowed with costs. parties are entitled for C.C.	Sd/- Fakhruddin Judge

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